IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 332 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JALALUDDIN ABDULRAHIM

Versus

STATE ;OF GUJ

Appearance:

1. Criminal Revision Application No. 332 of 1992

MR AV PRAJAPATI for Petitioners No. 1-2

NOTICE SERVED for Petitioners No. 1-2

MR BY MANKAD PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 04/10/2001

ORAL JUDGEMENT

#. This Revision Application is filed by the original accused of Special Atrocity Case No.46/1991 filed before Special Judge, Bharuch i.e. Additional Sessions Judge,

Bharuch, being aggrieved and dissatisfied by the order of learned Special Judge passed on 22.9.1992 convicting the present petitioners for the offences punishable under Section 323 of the Indian Penal Code. As per the brief facts of the case, in all against 3 accused a charge sheet for the offences punishable under Section 3(10) and (11) of the Scheduled Caste & Scheduled Tribe (Prevention of Atrocities) Act, 1989 and for the offences punishable under Section 147,148, 149 and 323 of the Indian Penal Code was submitted and the trial was conducted by the Special Judge, Bharuch i.e. Additional Sessions Judge, Bharuch. Out of the 5 accused, accused No.1, accused No.4 and accused No.5 were acquitted on the principle of benefit of doubt. While the present petitioner No.1 No.2 - Jalaluddin Abdulrahim Rana and Ori.accused No.3 - Iqbal Majale Saheb were convicted for the offences punishable under Section 323, while they were acquitted for the offences charged against them under Section 3(10) and (11) of the Scheduled Caste & Scheduled Tribe (Prevention of Atrocities) Act, 1989. Both the petitioners were sentenced to undergo imprisonment of 7 days and to pay fine of Rs.250/-. However, so far as the order of learned Special Judge, Bharuch passed on 22.9.1992 convicting the present petitioners is concerned, no grievance is made but it is submitted by this Revision Application that the learned Special Judge was required to consider whether it was the fit case to release the present petitioners under the Probation of Offender Act, 1958 as well as, as per Section 360 of the Criminal Procedure code. It is urged that though the contention was raised before the Special Judge, but the same is not considered. Since, the conviction is for 7 days S.I. no appeal lies and, hence, this Revision Application is for the above mentioned limited purpose.

#. This Court after considering the contention of learned advocate for the petitioners vide order dated 7.11.2000 called for the report of the Probation Officer which is received by this Court, has been placed on record of this file.

#. Learned advocate Mr.A.V.Prajapati, for the petitioner and learned APP Mr.B.Y.Mankad were heard.

#. Learned advocate Mr.Prajapati, for the petitioners submits that though the Revision Application is filed against the whole impugned order but now he restricts the scope of the revision to the extent only that whether petitioners are entitled to the benefit of probation. The Report submitted by the Probation Officer was taken into consideration.

#. Though the Special Judge was required to consider the request of the petitioners to release them on probation for the conviction of 7 days S.I. and for the fine of Rs.250/- for the offences punishable under Section 323 of the Indian Penal Code, but, it appears that the learned Special Judge has not taken this aspect into consideration. Since, the report of the Probation Officer has been called for by this Court and instead of remanding the case back to the Special Judge for consideration it is considered proper to decide whether the present petitioners can be released on probation and for that limited purpose this Revision Application is restricted now.

#. After taking into consideration, the report of the Probation Officer in respect of both the petitioners, it clearly transpires that this is the fit case for releasing the petitioners on probation under Section 360 of the Criminal Procedure Code as well as under Probation of Offenders Act, 1958. In this view of the matter, following order is passed.

This Revision Application is partly allowed and the order impugned of the Special Judge is revised to the extent that the punishment of imprisonment awarded to the present petitioners viz. (1) Jalaluddin Abdulrahim Rana and (2) Iqbal Majale Saheb is directed to be suspended for the period of 2 years on condition that both the petitioners shall furnish personal bond of Rs.5,000/- (Rupee Five Thousand Only) to the effect that they shall observe good conduct and behaviour and to appear and receive sentence when call upon by the Special Court during the above mentioned period of 2 years. It will be a specific term of bond that during this 2 years both the petitioners shall keep peace and shall maintain good behaviour.

Rule is made absolute to the above extent.

(J. R. VORA, J.)

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